

Message Text

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C-MR.KELLY
S/S:FORTIZ

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O R 062351Z JUN 75
FM SECSTATE WASHDC
TO AMEMBASSY SEOUL IMMEDIATE
AMEMBASSY OTTAWA
INFO AMEMBASSY TOKYO
USMISSION IAEA VIENNA

C O N F I D E N T I A L STATE 133128

EXDIS

E.O. 11652: GDS
TAGS: TGEN, TECH, KS, MNUC
SUBJECT: APPROACH TO ROKG ON NUCLEAR EXPORTS

REF: SEOUL 3973, 3374, 2743

1. BEGIN SUMMARY: WHILE WE RECOGNIZE CONCERNS REPORTED
IN REFTEL 3973 REALITY IS THAT OUR ABILITY TO PROCEED
WITH NEW EXPORT LICENSE IS NOW URGENTLY DEPENDENT ON WILL-
INGNESS OF ROKG TO EXPLICITLY CONFIRM IN WRITING THAT IT
SHARES OUR INTERPRETATION OF ARTICLE VIII (C) OF U.S.-
KOREAN AGREEMENT FOR COOPERATION. KOREAN CONFIRMATION OF
OUR UNDERSTANDING ALSO WILL BE ESSENTIAL BUT NOT NECESSARILY
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SUFFICIENT TO PERMIT THE PENDING EXPORT-IMPORT BANK CREDIT
TO BE FINALIZED. U.S. IS OF VIEW THAT THAT PROVISION
ACCORDS THE U.S. A RIGHT TO APPROVE FACILITIES IN WHICH
FUELS MAY BE REPROCESSED EVEN IF THE PARTIES FIRST JOINTLY

AGREE THAT SAFEGUARDS MAY BE EFFECTIVELY APPLIED TO THE FACILITY INVOLVED. ESSENTIAL THAT WE PROMPTLY OBTAIN KOREA'S CONFIRMATION THAT IT SHARES OUR UNDERSTANDING SINCE THIS COULD MITIGATE MORE GENERAL CONCERNS HERE, WHICH ARE GROWING EXPONENTIALLY, ABOUT KOREA'S REPROCESSING AMBITIONS. SHOULD BE STRESSED TO ROKG THAT WE WISH TO ENGAGE IN A FULL AND FRANK EXCHANGE WITH THEM ON THEIR REPROCESSING PLANS AND HOW THEY MIGHT AFFECT DEVELOPMENTS IN THE REGION. HOWEVER, WE WISH TO HOLD THESE DISCUSSIONS IN TWO DISTINCT STAGES AND FIRST CORROBORATE OUR UNDERSTANDINGS REGARDING ARTICLE VIII (C) SO THAT THERE IS NO POSSIBLE MISUNDERSTANDING AS TO OUR FORMAL RELATIONSHIP. COMPANION MESSAGE FORWARDED SEPTEL SETS FORTH FOR EMBASSY'S CONSIDERATION OUR VIEWS ON THE SUBSTANCE OF KOREA'S REPROCESSING AMBITIONS. END SUMMARY.

2. INITIAL FUEL CORE FOR KORI-1 REACTOR IS NOW UNDER MANUFACTURE BY WESTINGHOUSE AND CURRENTLY IS SCHEDULED TO BE SHIPPED TO KOREA AS MANUFACTURING IS COMPLETED OVER PERIOD AUGUST TO DECEMBER 1975. MATERIAL IS REQUIRED IN KOREA 7-1/2 MONTHS PRIOR TO REACTOR PLANT COMPLETION. INITIAL CORE LOADING WAS ORIGINALLY SCHEDULED FOR EARLY 1976. WHILE WESTINGHOUSE HAS ADVISED THAT INITIAL CORE LOADING NOW MAY SLIP UNTIL AUGUST 1976, REACTOR FUEL FABRICATION AND DELIVERY IS SCHEDULED TO TAKE PLACE ON BASIS ORIGINAL REACTOR SCHEDULE AND MODIFICATION OF THIS PROGRAM CAN JEOPARDIZE AVAILABILITY EVEN FOR DELAYED LOADING SINCE FUEL FABRICATION IS VERY TIGHTLY SCHEDULED.

3. ORIGINAL APPLICATION FOR EXPORT LICENSING FOR FIRST CHARGE FOR KORI-1 WAS GRANTED BY THE NUCLEAR REGULATORY COMMISSION (NRC) IN FEBRUARY. LICENSE WAS UNACCOUNTABLY LOST IN THE MAILED BETWEEN THE NRC AND WESTINGHOUSE AND IN ACCORDANCE WITH ESTABLISHED PROCEDURE HAS BEEN CANCELLED. NRC IS NOW TREATING LICENSE REISSUE DE NOVO AND HAS REQUESTED VIEWS OF THE EXECUTIVE BRANCH (STATE) ON THE PROPRIETY OF PROCEEDING. IN THIS REGARD, EMBASSY CONFIDENTIAL

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SHOULD BE AWARE THAT LICENSING AUTHORITY FOR EXPORTS OF SPECIAL NUCLEAR MATERIALS HAS BEEN TRANSFERRED TO NRC UNDER LEGISLATION ESTABLISHING NRC AND ERDA. NRC IS INDEPENDENT REGULATORY AGENCY, WHOSE DECISIONS ARE NOT SUBJECT TO REVIEW BY THE PRESIDENT. WHILE NRC-EXECUTIVE BRANCH RELATIONSHIPS ARE BEING DEVELOPED ON A SATISFACTORY BASIS, SUCH EXPORT LICENSES PRESENTLY CAN BE ISSUED ONLY ON DECISION BY NRC. WE BELIEVE, HOWEVER, THAT EXECUTIVE BRANCH VIEWS ON THESE MATTERS WILL BE RESPECTED TO THE EXTENT LEGITIMATE CONGRESSIONAL CONCERN CAN BE MET.

4. KEY ISSUE IN CONSIDERATION OF ISSUANCE OF EXPORT

LICENSE FOR KORI-1 FUEL IS ARRANGEMENT AFFECTING REPROCESSING OF THIS MATERIAL. IN THIS REGARD, CONGRESSMAN ASPIN HAS WRITTEN NRC SUGGESTING NO LICENSE BE ISSUED "PENDING THE AMENDMENT OF THE CONTRACT TO PROVIDE FOR U.S. CONTROL OF THE REPROCESSING AND DISPOSITION OF PLUTONIUM." NRC HAS MADE IT CLEAR TO THE EXECUTIVE BRANCH THAT QUESTION OF REPROCESSING WILL BE IMPORTANT ISSUE IN THEIR CONSIDERATION OF EXPORT LICENSING REISSUE.

5. UNDER AGREEMENT FOR COOPERATION, AS AMENDED, REPROCESSING OF U.S. SUPPLIED MATERIAL IN KOREA IS SUBJECT TO ARTICLE VIII (C) OF THE AGREEMENT WHICH PROVIDES THAT REPROCESSING OF SPECIAL NUCLEAR MATERIAL RECEIVED FROM THE U.S. "SHALL BE PERFORMED IN FACILITY ACCEPTABLE TO BOTH PARTIES UPON A JOINT DETERMINATION THAT THE PROVISIONS OF ARTICLE XI (SAFEGUARDS) MAY BE EFFECTIVELY APPLIED." IN OUR VIEW THIS CLAUSE CALLS FOR TWO DISTINCT STEPS. FIRST, THERE MUST BE A JOINT DETERMINATION THAT SAFEGUARDS MAY BE EFFECTIVELY APPLIED. ONCE THIS DETERMINATION IS MADE, THERE IS STILL A SECOND, INDEPENDENT REQUIREMENT THAT THE FACILITIES MUST BE ACCEPTABLE TO BOTH PARTIES. WHILE A JOINT DETERMINATION PERTAINING TO SAFEGUARDS IS A PREREQUISITE TO SUCH MUTUAL ACCEPTABILITY, SUCH A JOINT DETERMINATION RE SAFEGUARDS NOT IN ITSELF A SUFFICIENT CONDITION TO REQUIRE A FINDING OF MUTUAL ACCEPTABILITY BY THE U.S.. BEGIN FYI: LANGUAGE IN ROK AGREEMENT (AND IN NUMBER OF TTHR COUNTRIES SUCH AS ROC, SOUTH AFRICA AND CONFIDENTIAL

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SPAIN) DIFFERS FROM TEXT IN SOME OF OUR OTHER AGREEMENTS WHICH SEEM TO REQUIRE INTERPRETATION THAT THE JOINT DETERMINATION REGARDING THE SAFEGUARDABILITY OF A PLANT IS THE ONLY TEST THAT NEEDS TO BE MET IN JUDGING A FACILITY TO BE ACCEPTABLE. WE RECOGNIZE, HOWEVER, THAT KOREANS MAY ARGUE THAT THEIR REPROCESSING LANGUAGE CONTAINS SOME AMBIGUITY, AND, COMPARING LANGUAGE IN 1956 COOPERATION AGREEMENT WITH THAT PROPOSED BY USG AND ADOPTED IN 1972 AGREEMENT, THAT THEY MAY CONTEND THAT THE PHRASE "UPON A JOINT DETERMINATION . . ." DEFINES AND LIMITS GROUNDS FOR DECISION RE ACCEPTABILITY OF FACILITIES, AND DOES NOT CALL FOR TWO INDEPENDENT JUDGEMENTS. WE COULD NOT ACCEPT THIS INTERPRETATION. MOREOVER, OUR INTERPRETATION OF LANGUAGE IS CONSISTENT WITH OUR PRESENT GENERAL POLICY CONCERNING PROCESSING AND PROVIDES VALUABLE OPPORTUNITY FOR US TO TIE-DOWN UNQUALIFIED RIGHT OF APPROVAL OVER REPROCESSING FACILITIES FOR U.S.-SUPPLIED FUEL. END FYI.

6. IN VIEW OF IMPORTANCE OF AVOIDING ANY MISUNDERSTANDING DEPARTMENT HAS CONCLUDED THAT BEST COURSE OF ACTION PRIOR TO CONSIDERATION REISSUANCE OF EXPORT LICENSE IS TO SEEK

EXPLICIT KOREAN CONFIRMATION OF U.S. INTERPRETATION OF REPROCESSING PROVISIONS. ACCORDINGLY, EMBASSY INSTRUCTED TO TRANSMIT FOLLOWING AIDE MEMOIRE TO GOK. IN TRANSMITTING AIDE MEMOIRE, EMBASSY SHOULD NOTE (A) OUR CONCERNS ABOUT POSSIBLE PUBLIC REACTIONS REGARDING NRC LICENSING OF NUCLEAR EXPORTS AND CONGRESSIONAL CONCERNS RE EXPORT-IMPORT BANK (EXIM) CREDITS, (B) "TECHNICAL AND OPERATIONAL" REASONS MENTIONED IN AIDE MEMOIRE REFER TO EXECUTIVE BRANCH DESIRE TO PRESENT KOREA'S POSITION TO NRC AND CONGRESS IN EFFECTIVE MANNER, AND (C) EXPLICIT ROKG

CONFIRMATION IS ESSENTIAL IF USG IS TO MAKE EFFECTIVE ATTEMPT TO ALLAY IN ADVANCE PROBABLE CONCERNS AND EVEN PUBLIC CONTROVERSY.

7. YOU SHOULD ALSO INDICATE THAT IN NEAR FUTURE, AND AS SEPARATE MATTER, THE UNITED STATES GOVERNMENT HOPES TO BE IN A POSITION TO HAVE A THOROUGH EXCHANGE OF VIEWS ON SUBJECT OF REPROCESSING WITH THE ROKG, BEARING IN MIND

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KOREA'S EXPRESSED INTEREST IN THIS FIELD (REFS 3374 AND 2743).

8. BEGIN TEXT OF AIDE MEMOIRE: THE UNITED STATES GOVERNMENT WISHES TO CALL THE ATTENTION OF THE GOVERNMENT OF THE REPUBLIC OF KOREA TO PARAGRAPH C OF ARTICLE VIII OF THE AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE REPUBLIC OF KOREA CONCERNING CIVIL USES OF ATOMIC ENERGY, AND TO SECURE FOR TECHNICAL AND OPERATIONAL REASONS, THE CONFIRMATION OF THE ROK THAT ITS UNDERSTANDING OF THIS PROVISION IS IDENTICAL TO THE UNDERSTANDING OF THE UNITED STATES GOVERNMENT.

PARAGRAPH C OF ARTICLE VIII PROVIDES:

"C. WHEN ANY SPECIAL NUCLEAR MATERIAL RECEIVED FROM THE UNITED STATES OF AMERICA PURSUANT TO THIS AGREEMENT OR THE SUPERSEDED AGREEMENT REQUIRES REPROCESSING, OR ANY IRRADIATED FUEL ELEMENTS CONTAINING FUEL MATERIAL RECEIVED FROM THE UNITED STATES OF AMERICA PURSUANT TO THIS AGREEMENT OR THE SUPERSEDED AGREEMENT ARE TO BE REMOVED FROM A REACTOR AND ARE TO BE ALTERED IN FORM OR CONTENT, SUCH REPROCESSING OR ALTERATION SHALL BE PERFORMED IN FACILITIES ACCEPTABLE TO BOTH PARTIES UPON A JOINT DETERMINATION OF THE PARTIES THAT THE PROVISIONS OF ARTICLE XI MAY BE EFFECTIVELY APPLIED."

THIS LANGUAGE CLEARLY PROVIDES FOR TWO STEPS INVOLVING TWO SEPARATE AND DISTINCT JUDGMENTS. FIRST, AS APREREQUISITE TO REPROCESSING ANY SPECIAL NUCLEAR MATERIAL RECEIVED FROM THE UNITED STATES OR

ALTERING IN FORM OR CONTENT ANY IRRADIATED FUEL ELEMENTS
CONTAINING FUEL MATERIAL RECEIVED FROM THE UNITED STATES,
THERE MUST BE A JOINT DETERMINATION BY THE GOVERNMENTS
OF THE REPUBLIC OF KOREA AND OF THE UNITED STATES THAT THE
PROVISIONS OF ARTICLE XI (SAFEGUARDS) MAY BE EFFECTIVELY
APPLIED. ONCE SUCH A JOINT DETERMINATION IS MADE, THE
SECOND STEP PREREQUISITE TO REPROCESSING OR ALTERATION
IS THAT THE GOVERNMENTS OF KOREA AND THE UNITED STATES
MUST AGREE THAT THE FACILITIES AT WHICH THE REPROCESSING
SHALL BE PERFORMED ARE MUTUALLY ACCEPTABLE.

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THE UNITED STATES GOVERNMENT WOULD APPRECIATE
RECEIVING CONFIRMATION FROM THE GOVERNMENT OF THE REPUBLIC
OF KOREA THAT IT SHARES THE ABOVE UNDERSTANDING OF PARA-
GRAPH C OF ARTICLE VIII. END TEXT.

9. EMBASSY REQUESTED TRANSMIT AIDE MEMOIRE TO ROK
SOONEST, NOTING THAT WE DESIRE TO ENGAGE IN BROAD SUB-
STANTIVE DISCUSSION OF ROK'S INTEREST IN DEVELOPING A
REGIONAL FACILITY (REFS 3374 AND 2743) AFTER THE ROK'S
REPLY TO OUR NOTE HAS BEEN RECEIVED. BEGIN FYI: SHOULD
BE STRESSED THAT WE PREFER HANDLE TALKS IN THESE TWO
DISTINCT STAGES SINCE WE DO NOT WISH ROK POSITION ON OUR
INTERPRETATION OF COOPERATION AGREEMENT TO BE ADVERSELY
INFLUENCED BY WHAT WE EXPECT WILL BE VERY NEGATIVE U.S.
ATTITUDE TO THE LOCATION OF ANY REPROCESSING CAPABILITY
OR STORAGE OF PLUTONIUM IN ROK AND WHICH MAY AFFECT EX-IM
ISSUE. WE WOULD ASK CANADIANS TO ADOPT SUPPORTIVE
APPROACH IN GOC NUCLEAR TRANSACTIONS WITH ROK. WE HAVE
NO DESIRE APPEAR TO BE DISINGENOUS BUT BELIEVE A SHARP
DISTINCTION CAN BE DRAWN BETWEEN OUR RIGHTS UNDER AGRE-
EMENT AND OUR VIEWS ON KOREAN REPROCESSING PLANS. END FYIGM

10. IF ROKG PRESSES EMBASSY CONCERNING REASONS FOR U.S.
REQUEST, EMBASSY SHOULD MINIMIZE PERCEPTION OF QUID-PRO-
QUO AFFECTING NRC EXPORT LICENSE OR EX-IM CREDITS (WHICH
FYI MAY DEPEND ON BROADER ASSURANCES IN ANY EVENT),
EMPHASIZING GENERAL CONCERN HERE OVER KOREAN REPROCESSING
INTENTIONS AND INTENSIFYING PROBLEMS WITH CONGRESS ON
NUCLEAR EXPORTS. IF PRESSED ON WHAT CRITERIA BEYOND
SAFEGUARDABILITY U.S. MIGHT APPLY IN MUTUAL ACCEPTABILITY
FOR REPROCESSING, EMBASSY SHOULD AVOID SPECIFICS AND

INDICATE THIS WOULD BE DEALT WITH IN OUR SECOND-STAGE
DISCUSSIONS, BUT THATWE WOULD NOT RESTRICT PROCESSING IN
KOREA ON BASIS OF PURELY COMMERCIAL CONSIDERATIONS.

11. FYI: THE PENDING EX-IM APPROVAL FOR A LOAN FOR
KORI-2 REACTOR IS ANOTHER ISSUE CLOSELY RELATED TO THE
PROPOSED FUEL EXPORT. EX-IM HAS JUST RESUBMITTED THIS
REQUEST TO CONGRASS FOR THE 25 DAY STATUTORY PERIOD,

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BUT IS OPERATING ON THE CLEAR UNDERSTANDING THAT
THE
SAFEGUARDS AND REPROCESSING ARRANGEMENTS MUST BE ACCEPTABLE
TO THE EXECUTIVE BRANCH BEFORE THE LOAN CAN BE FINALIZED.
IN LIGHT OF OUR PREVIOUS EXPERIENCE, RECEPTION OF THIS
LOAN APPLICATION BY CONGRESS ALSO IS LIKELY TO DEPEND
HEAVILY ON PROMPT RESOLUTION OF REPROCESSING ISSUE
DESCRIBED ABOVE. SENATOR STEVENSON AND CONGRESSMAN REES
LIKELY TO FOCUS ON EXPORTS TO KOREA IN ANTICIPATED
HEARINGS IN RESPECTIVE SUBCOMMITTEES. MOREOVER, EXPORT

OF KORI-2 REACTOR ITSELF WILL IN ALL PROBABILITY HAVE
TO BE LICENSED BY NRC. (NEED FOR REACTOR EXPORT LICENSING
DEPENDS ON WHETHER OR NOT SUBSTANTIAL PORTION OF MAJOR
COMPONENTS ARE EXPORTED FROM U.S. AS CONTRASTED WITH
FABRICATION IN RECIPIENT COUNTRIES OF THIRD COUNTRIES.
IN KOREAN CASE, WE EXPECT MAJOR COMPONENTS TO BE FABRI-
CATED IN U.S., AND, ACCORDINGLY, THAT EXPORT LICENSE
WILL BE REQUIRED. END FYI. KISSINGER

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